

1 COOLEY LLP  
MAZDA K. ANTIA (214963)  
2 (mantia@cooley.com)  
MARY KATHRYN KELLEY (170259)  
3 (mkkelley@cooley.com)  
4401 Eastgate Mall  
4 San Diego, CA 92121  
Telephone: (858) 550-6000  
5 Facsimile: (858) 550-6420

6 CALIFORNIA PLANNED PARENTHOOD  
EDUCATION FUND  
7 MAGGY KRELL (226675)  
(Maggy.Krell@ppacca.org)  
8 555 Capitol Mall, Suite 510  
Sacramento, CA 95814  
9 Telephone: (916) 446-5247  
Facsimile: (916) 441-0632

10 Attorneys for Plaintiff  
11 California Planned Parenthood Education Fund

12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA  
14

15 California Planned Parenthood Education  
16 Fund,

17 Plaintiff,

18 v.

19 U.S. Department of Health and Human  
20 Services,

21 Defendant.

Case No.

**COMPLAINT**

1           1.       Plaintiff California Planned Parenthood Education Fund (“CPPEF”) brings this action  
 2 against defendant U.S. Department of Health and Human Services (“HHS”) to compel HHS to  
 3 comply with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) and immediately process  
 4 and release requested documents related to the award of family planning grants to Obria Group, Inc.  
 5 (“Obria”) for use in California under Title X of the Public Health Service Act, 42 U.S.C. §§ 300-  
 6 3001-8.

8           2.       On June 1, 2018, the federal register published a proposed rule issued by HHS titled  
 9 “Compliance with Statutory Program Integrity Requirements” (RIN: 0937-ZA00). On February 22,  
 10 2019, the proposed rule was finalized and published. The new Title X regulations make dramatic  
 11 changes to the Title X family planning program that stand to have a far-reaching and devastating  
 12 impact on CPPEF’s clients including California’s most vulnerable women. In particular, the  
 13 regulations have the effect of limiting the availability of all 18 FDA-approved methods of  
 14 contraception for women, giving preference to fertility awareness and natural family planning  
 15 clinics, and defunding sites that provide abortion services and counseling.

17           3.       On March 29, 2019, HHS announced Title X grant recipients under the new rules.  
 18 HHS granted Obria Title X funds. Obria does not offer comprehensive family planning and  
 19 reproductive healthcare services, and is a first-time recipient of the grant.<sup>1</sup> Upon information and  
 20 belief, Obria is a chain of pregnancy clinics substantially funded by allies of the Catholic Church,<sup>2</sup>  
 21 an institution that has advocated against the use of contraceptives. Obria’s pregnancy clinics do not  
 22 offer contraceptive choices, beyond fertility awareness.<sup>3</sup> Obria’s previous application for federal  
 23

24  
 25  
 26 <sup>1</sup> See Adriana Eunjung Cha, *New federally funded clinics emphasize abstinence, natural family planning*, The  
 Washington Post, July 29, 2019, available at <https://www.washingtonpost.com/health/2019/07/22/new-federally-funded-clinics-california-emphasize-abstinence-natural-family-planning/>.

27 <sup>2</sup> See Kenneth P. Vogel & Robert Pear, *Trump Administration Gives Family Planning Grant to Anti-Abortion Group*,  
 N.Y. Times, Mar. 29, 2019, available at <https://www.nytimes.com/2019/03/29/us/politics/trump-grant-abortion.html>.

28 <sup>3</sup> See *Cha*, *supra*, 2.

1 funding under HHS's FY 2018 Title X Family Planning Services Funding Opportunity  
2 Announcement was rejected for its failure to comply with Title X rules requiring grantees to include  
3 a provider that offers hormonal birth control.<sup>4</sup>

4 4. Pursuant to FOIA, on April 22, 2019, CPPEF requested information from HHS  
5 regarding Obria and the grant application review and awards process that led to Obria's receipt of  
6 Title X funds. (Exhibit A.)

7 5. On April 25, 2019, CPPEF received a response from HHS in which the agency  
8 acknowledged receipt of the request and designated it "19-0218-FOIA." (Exhibit B.) In its response,  
9 HHS also sought clarification of CPPEF's request, claiming it would be unable to form an adequate  
10 search for responsive records until it was provided with "the HHS employee names, titles, email  
11 addresses, and the email addresses of individuals who are associated with Obria Group." (*Id.*) On  
12 May 6, 2019, CPPEF provided the requested clarification and information. (Exhibit C.)

13 6. Since then, CPPEF and HHS have engaged in informal discussions regarding the  
14 status of CPPEF's FOIA request, 19-0218-FOIA. HHS has been unable to commit to any timeline  
15 for the production of responsive documents and it has not produced a single responsive document.

16 7. HHS has thus far exceeded the twenty working day statutory and regulatory time  
17 limits to respond. *See* 5 U.S.C. § 552(a)(6)(A)(i); 552(a)(6)(E)(ii)(I). Accordingly, CPPEF  
18 respectfully requests that this Court issue an order compelling HHS to process CPPEF's request  
19 immediately and produce responsive documents and enjoining HHS from assessing fees for  
20 processing the request.  
21  
22  
23  
24  
25  
26  
27

28 <sup>4</sup> *See* Victoria Colliver, *Anti-abortion clinics tapping into federal funds under Trump*, Politico, Dec. 16, 2018, available at <https://www.politico.com/story/2018/12/16/abortion-pregnancy-centers-planned-parenthood-1007765>.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

9. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

10. CPPEF has exhausted its administrative remedies. *See* 28 U.S.C. § 552(a)(6)(C)(i).

**PARTIES**

11. CPPEF is a not-for-profit organization whose mission is to provide comprehensive reproductive and complementary health care services, educational reproductive and sexual health programs and advocacy for policies that ensure access to health services. CPPEF and its sister organization Planned Parenthood Affiliates of California represent seven Planned Parenthood affiliates in California that collectively operate 115 health centers and satellite health centers and serve roughly 862,000 patients per year that are unique to each health center.

12. Defendant HHS is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. HHS has possession, custody and control of the records to which CPPEF seeks access.

**FACTUAL ALLEGATIONS**

13. In 1970, Congress enacted Title X of the Public Health and Service Act (the “Act”), 84 Stat. 1506, as amended, 42 U.S.C. §§ 300 to 300a-6, which provides federal funding for family-planning services. The Act authorizes the Secretary of HHS to “make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services.” 42 U.S.C. § 300(a). All Grants and contracts under Title X must “be made in accordance with such regulations as the Secretary may promulgate.” 42 U.S.C. § 300a-

1 4(a). There is a crucial need for Title X services in California where there are over two million  
2 uninsured people.

3 14. Pursuant to FOIA, on August 1, 2018, CPPEF requested certain documents from  
4 HHS regarding the proposed rule titled “Compliance with Statutory Program Integrity  
5 Requirements” (RIN: 0937-ZA00), issued by HHS and published in the federal register on June 1,  
6 2018. (Exhibit D.) CPPEF’s August 1, 2018 FOIA request sought information regarding how the  
7 proposed rule was formulated, who was involved in consulting with the Department, and the  
8 comment submission posting and review process. HHS failed to respond to CPPEF’s August 1,  
9 2018 FOIA request in a timely fashion and it is now the subject of litigation in a related case in this  
10 Court, Case No. 2:19-cv-00340-TLN-CKD. CPPEF and HHS have discussed those requests and  
11 CPPEF expects to receive partial productions towards those requests in September and October  
12 2019.  
13  
14

15 15. On February 22, 2019, the proposed rule was finalized and published. The new Title  
16 X regulations make significant changes to the Title X family planning program that stand to have a  
17 devastating impact on CPPEF’s clients including California’s most vulnerable women. In particular,  
18 the regulations have the effect of limiting the availability of all 18 FDA-approved methods of  
19 contraception for women, giving preference to fertility awareness and natural family planning  
20 clinics, and defunding sites that provide abortion services and counseling.  
21

22 16. On March 29, 2019, HHS announced Title X grant recipients, including Obria in  
23 California. Obria is a chain of pregnancy clinics that do not offer comprehensive family planning  
24 and reproductive healthcare services. In particular, Obria’s clinics do not offer contraceptive  
25 choices, beyond fertility awareness.  
26  
27  
28

1           17.       On April 22, 2019, CPPEF submitted a FOIA request to HHS, which is attached as  
2 Exhibit A. The FOIA request seeks records related to Obria and the grant application review and  
3 awards process that led to Obria's receipt of Title X funds. In particular, the request seeks:

- 4           • Records from May 1, 2017 through March 29, 2019 related to communications  
5           between and among HHS employees and/or outside consultants or members of the  
6           public discussing or referencing Obria (Request 1);
- 7           • Records from May 1, 2017 through March 29, 2019 related to communications  
8           between HHS employees and various individuals who are associated with Obria  
9           (Request 2);
- 10          • Records from May 1, 2017 through March 29, 2019 related to communications  
11          between HHS employees and/or outside consultants discussing the objective review  
12          and scoring process for grant applications (Request 3);
- 13          • The scores that each California grant application received in the objective review  
14          process (Request 4);
- 15          • Documentation explaining additional factors that were considered apart from the  
16          ranked scoring system in determining the final awards for California grantees  
17          (Request 5);
- 18          • Reviewers who were responsible for evaluating California's grant applications  
19          (Request 6).

20           18.       On April 25, 2019, CPPEF received a response from HHS, which acknowledged  
21 receipt of CPPEF's request but sought clarification. (Exhibit B.) CPPEF provided the requested  
22 clarification on May 6, 2019. (Exhibit C.)

23           19.       CPPEF and HHS have engaged in informal discussions regarding the status of  
24 CPPEF's FOIA request, 19-0218-FOIA. HHS has been unable to commit to any timeline for the  
25 production of responsive documents and it has not produced a single responsive document.

26           20.       HHS's response to CPPEF's FOIA request is overdue in violation of the statute.  
27 Under FOIA an agency must determine whether to comply with the request within twenty days  
28 (excluding weekends and legal holidays). *See* 5 U.S.C. § 552(a)(6)(A)(i). It has been over four  
months since CPPEF's initial April 22, 2019 FOIA request and since CPPEF provided the

1 clarification requested by HHS. As of the filing of this Complaint, HHS has not provided a formal  
2 response to CPPEF's FOIA request nor has it provided a single responsive document.

3 21. Thus, HHS has failed to comply with the time limits imposed by the FOIA statute and  
4 the applicable HHS regulations. CPPEF has exhausted all administrative remedies. *See* 5 U.S.C. §  
5 522(a)(6)(C)(i). Accordingly, HHS must be compelled to comply with FOIA and immediately  
6 process and release the requested information.  
7

8 22. Further, the fees for responding the FOIA request should be waived. Under FOIA, an  
9 agency "shall not assess any search fees" if the agency fails to respond to a request for documents  
10 within the time frame required by the statute. 5 U.S.C. § 552(a)(4)(A)(viii)(I). HHS's own  
11 regulations require HHS to respond within 20 days or to waive search fees. 45 C.F.R. §5.53(d)(1)  
12 ("If [HHS] fail[s] to comply with the FOIA's time limits in which to respond to a request, [HHS]  
13 may not charge search fees").  
14

15 23. Fees should also be waived or reduced pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)-(iii)  
16 and 45 C.F.R. § 5.54 because disclosure in this case is (1) in the public interest because it is "likely to  
17 contribute significantly to public understanding of the operations or activities of the government" and  
18 (2) "not primarily in the commercial interest of the requester." This standard under FOIA is to be  
19 "liberally construed in favor of waivers for noncommercial requesters" like CPPEF. *McClellan*  
20 *Ecological Seepage Situation v. Cartucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).  
21

22 24. First, the disclosure CPPEF seeks is in the public interest. The requested records  
23 pertain to the operations and activities of the federal government and their disclosure will ensure  
24 transparency in HHS's process of awarding family planning grants under Title X of the Public  
25 Health Service Act, 42 U.S.C. §§ 300-3001-8. Disclosure in response to this request would certainly  
26 "contribute significantly to public understanding" of HHS's operations. 5 U.S.C. § 552(a)(4)(A)(iii).  
27  
28

25. Second, disclosure is not in CPPEF's commercial interest. CPPEF is a not-for-profit organization whose mission is to provide educational reproductive and sexual health programming, complementary health care services, and advocacy for policies that ensure access to health services. The purpose of the request is to monitor and evaluate government operations with respect to a public health program that currently serves millions of people. Depending on the content of the records disclosed, CPPEF may disseminate the information to the public, and if so, will provide the information at no cost.

26. Disclosure in response to CPPEF's request is in the public interest and not primarily in CPPEF's commercial interest, accordingly, HHS should furnish the requested records "without any charge or at a charge reduced below the fees established." 5 U.S.C. § 552(a)(4)(A)(iii).

**CLAIMS FOR RELIEF**  
**COUNT ONE**  
**(VIOLATION OF FOIA, 5 U.S.C. § 552)**

27. CPPEF incorporates by reference the foregoing paragraphs as if fully set forth herein.

28. On April 22, 2019, CPPEF submitted a request under FOIA to HHS, an agency of the United States for records in HHS's possession, custody and control. HHS acknowledged receipt and sought clarification on April 25, 2019. CPPEF promptly provided clarification on May 6, 2019. HHS has failed to substantively respond to CPPEF's request or produce a single document within the statutory deadlines. Thus, HHS has violated FOIA and CPPEF has exhausted its administrative remedies.

29. By failing to substantively respond to CPPEF's request within the statutorily prescribed time limit, HHS has violated its duties under 5 U.S.C. § 552 and its own regulations implementing FOIA at 45 C.F.R. §§ 5 *et seq.* These duties include, but are not limited to, the duties to process CPPEF's request expeditiously and as soon as practicable; to notify CPPEF of its determination and justifications; to conduct a reasonable search for responsive records and to produce non-exempt responsive records.

**PRAYER FOR RELIEF**

CPPEF requests that this Court:

30. Order HHS to immediately conduct a thorough search for any and all records responsive to CPPEF's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;

31. Order HHS to immediately process and release any responsive records in their entirety and make copies available to CPPEF;

32. Enjoin HHS from charging CPPEF search, review or duplication fees for the processing of its request;

33. Award CPPEF its costs, attorneys' fees, and other disbursements for this action under 5 U.S.C. § 552(a)(4)(E)(i); and

34. Grant any other relief this Court deems just and proper.

Dated: September 13, 2019

By: /s/ Mary Kathryn Kelley

Mary Kathryn Kelley  
Mazda K. Antia  
COOLEY LLP  
4401 Eastgate Mall  
San Diego, CA 92121  
Tel.: (858) 550-6000  
Fax: (858) 550-6420  
mkkelley@cooley.com  
mantia@cooley.com

-and-

Maggy Krell  
CALIFORNIA PLANNED PARENTHOOD  
EDUCATION FUND  
555 Capitol Mall, Suite 510  
Sacramento, CA 95814  
Tel.: (916) 446-5247  
Fax: (916) 441-0632  
Maggy.Krell@ppacca.org

*Attorneys for Plaintiff California Planned  
Parenthood Education Fund*